

NTSB Order No. EA-4418

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 16th day of January, 1996

Docket SE-14094

complaint, the Administrator alleged that, on November 18, 1991, respondent was convicted, in the U.S. District Court for the Eastern District of Washington, of manufacture of a controlled substance (marijuana). The Administrator further alleged that respondent lacked the care, judgment, and responsibility required of the holder of a private pilot certificate. As discussed below, the respondent's appeal is denied.

In his response to the complaint, respondent admitted that he had been convicted² as alleged by the Administrator but that an appeal of the conviction was pending.³ He also argued that
(..continued)

FAR sections 61.15(a) states, in pertinent part:

§61.15 Offenses involving alcohol or drugs.

(a) A conviction for the violation of any Federal or state statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, or depressant or stimulant drugs is grounds for --

* * *

(2) Suspension or revocation of any certificate or rating issued under this part.

²On November 18, 1991, respondent was found guilty in federal district court, under 21 U.S.C. § 841(a)(1), of Manufacturing a Schedule I controlled substance, sentenced to 60 months imprisonment, fined \$25,000, and required to forfeit certain real property.

21 U.S.C. § 841(a)(1) states:

(a) Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally -

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance.

³He does not on appeal renew the argument that this proceeding was precluded by the pendency of his appeal from the

any further punishment for the same crime is prohibited under the Fifth Amendment to the United States Constitution.

On July 12, 1995, the Administrator filed a Motion for Summary Judgment, stating that there were no issues of material fact to be decided. To support the motion, he attached a copy of the judgment in respondent's criminal case. Also attached to the motion was a declaration by FAA Special Agent Galen N. Willis, Jr., explaining that respondent's conviction was based on the seizure of approximately 240 marijuana plants found in respondent's home. The law judge noted, in the Decisional Order, that respondent did not dispute the fact of his conviction for a drug trafficking offense and did not dispute the information in the special agent's declaration. On that basis, he found that no general issue of material fact existed and, thus, granted the motion.

Respondent, on appeal, again raises the issue of double jeopardy, arguing that revocation of his private pilot certificate under FAR section 61.15(a) is based solely on his conviction and, as such, is prohibited under the Fifth Amendment to the U.S. Constitution.⁴ We find his argument unavailing. The Board has consistently stated that revocation is remedial, not punitive. See Administrator v. Berryhill, NTSB Order No. EA-4414 (...continued)
conviction.

⁴Respondent also appeals the law judge's denial of his motion for appointment of counsel. Board hearings are civil, administrative proceedings, not criminal and, therefore, respondent has no right to counsel. See Administrator v. Olsen and Nelson, NTSB Order No. EA-3949 at 7 (1993).

at 3, n.4 (1996) and cases cited therein; Administrator v. Manning, NTSB Order EA-4363 (1995). It is utilized, in the interest of air safety, when an airman is deemed to lack the requisite care, judgment, and responsibility of a certificate holder.

In addition, respondent is mistaken in contending that the revocation is based solely on the fact of the conviction. He was convicted of a drug-related offense involving possession of a controlled substance for commercial purposes, a situation that the Board has repeatedly stated warrants revocation under the provisions of FAR section 61.15. See Administrator v. Piro, NTSB Order No. 4049 at 4 (1993), aff'd, Piro v. NTSB, 66 F.3d 335 (9th Cir. 1995). See also Administrator v. Correa, NTSB Order No. EA-3815 at 3-4 (1993), aff'd, 17 F.3d 1438 (1994) (under section 61.15, the Administrator may revoke the certificate of an airman convicted of a drug offense whether or not that offense involved the use of an aircraft).

As the respondent has identified no reason to disturb the decision of the law judge, the appeal will be denied.

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied, and
2. The decision of the law judge and the Administrator's order of revocation are affirmed.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT and GOGLIA, Members of the Board, concurred in the above opinion and order.